

my finding on it also. As laid down in A.I.R. 1955 Supreme Court 233 and 1954 S.C. 513 the question as to whether the result of an election has been materially affected or not, is not a matter on which any conjecture is permissible and that it has to be established by clear and sufficient evidence. From the diaries of the presiding officers it is seen that there were 72, 150, 89, 40, 164 and 200 electors respectively at Jakkasandra, Kanakapura, Hulibele, Doddakabballi, Thungani and Maralavadi polling stations at the closing hour. This means that there were 715 electors at these polling stations at the closing hour. According to the presiding officers' diaries, there were no electors at the closing hour at Hosadurga, Aralalusandra, Hirendyapanahalli and T. Hosalli booths. The witnesses of the petitioner have stated that there were about 60 electors at each of the polling stations Hosadurga and Aralalusandra, and they have not specified any number with respect to Hirendyapanahalli and T. Hosalli. If the number of electors present at Hosadurga and Aralalusandra at the closing hour is added to the figure arrived at on the basis of the presiding officers' diaries, then the total would be 835. Difference of votes secured by the returned candidate and the defeated candidate, viz., the petitioner, is 1,563 and so, in any case, even if there be any non-compliance of any rule, the result of the election, in so far as it concerns the returned candidate, has not been materially affected. The finding of Issue No. 3 (b) is that, presuming that there is non-compliance with the rule, it has not materially affected the election of the respondent.

36. Issue No. 4.—P.W. 15 Sri K. Subba Rao was one of the members of the selection committee for selecting candidates for Parliamentary and Legislative Assembly seats of Bangalore District. The petitioner and the respondent were candidates for getting the Congress ticket for Kanakapura Assembly Constituency and the selection committee gave the ticket to the petitioner. It was suggested to the respondent that he should go to his own constituency, i.e., Virupakshapura, but he refused to do so. The respondent resigned from the Congress and stood as a candidate of Swatantra Congress party. While carrying on the canvassing campaign, the respondent said in meetings at Hukunda and Averahalli that he and the members of his party were genuine Congressmen and that he was out to purify the Congress. At the meetings and also on the election car the respondent displayed the Congress flag substituting the scales for the Charka. The flag that was being displayed by the respondent was similar to those that can be seen in the photograph Exhibit P-4 at 'A' and 'B'. The effect of the display of these flags was to create the impression that the respondent was a Congress candidate. Several electors asked P.W. 15 as to how they should distinguish between one candidate and the other when the respondent was using the same symbol, the same flag and was saying that he was a Congress candidate. P.W. 25 Sri Seetharam who is the Secretary of the Bangalore Rural District Congress Committee states that he received complaints that the respondent was posing himself as a Congress candidate and was using the Congress flag with the scales in place of Charka. The witness toured in the constituency and found the complaint to be true. He wrote to the Chief Electoral Officer pointing out what the respondent was doing. It is advisable to mention here that no steps were taken for getting the original letter addressed to the Chief Electoral Officer produced before the

Tribunal. P.W. 25 got it published in Prajavani and Indian Express that the respondent had been expelled from the Congress organisation due to his having stood against the official Congress candidate. Exhibits P-6 and 7 are the extracts of the Newspapers. P.W. 26 C. N. Jagannath deposes that during the canvassing campaign made in favour of the respondent, it was being said that the respondent was more sincere and that the vote given to him would be a vote for the Congress. He also refers to the flag that was being used by the respondent. P.W. 28 C. N. L. Sastry who is the President of the Maralavadi Mandal Congress also corroborates the testimony of P.W. 26 and deposes that he complained about that to the Election Commission, India, the Chief Electoral Officer, Mysore, the Mysore Pradesh Congress Committee and the Local Circle Inspector of Police. The petitioner deposes that the respondent and Sri Budhadas were displaying the tri-colour flag with the scales in the centre similar to Exhibit P-4 (a) at their meetings. This had been done to falsely create an impression on the illiterate electors that they too belonged to the Congress. The illiterate elector thought as the respondent previously belonged to the Congress, he continued to represent the Congress. The respondent had been elected at the previous elections from Virupakshapura constituency.

37. The version of the respondent is that he was a member of the Mysore State Congress Committee till he resigned perhaps in December 1961. He had applied for a ticket for Kanakapura Assembly constituency, but as the majority group in the Mysore State Congress was not well-disposed towards him, he was not given the ticket. As he wanted to take the verdict of the electorate, he contested for the seat. During the election campaign he criticised many members of the Mysore State Congress for the mistakes that they had been committing. The other candidates who had not been given tickets from the Congress like him formed a group and called it Swatantra Congress Party. The members of the Swatantra Congress Party constituted a committee for election purposes known as Mysore Independent Congress Candidates Action Committee and the respondent was elected its President.

38. P.W. 15 has no personal knowledge about the photograph Exhibit P-4. Exhibit P-1 is a statement of the respondent published in the Prajavani Newspaper, dated 5th February 1962 informing the public that he had himself come out of the Congress Organisation and that he was out to purify it. Exhibit R-2 is a wall-poster in which the respondent has been described as a Swatantra Congress candidate. P.W. 15 admits that nobody during his election tour brought it to his notice that the respondent was representing himself to be the Congress candidate. Exhibit R-3 is a letter written by P.W. 25 Seetharam to the respondent on 21st July 1956 requesting to nominate him to Uttarahalli Constituency. Exhibit R-4 is said to be the reply given to Exhibit R-3 by the respondent but this has not been admitted by P.W. 25. These letters have been produced to show that the feelings between the witness and the respondent are strained. However P.W. 25 admits that the respondent is very influential in Kanakapura Taluk. The petitioner admits that he is not aware of any rule prohibiting the display of tricolour flag by any party other than the Congress party. The petitioner was not present when the